IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4816 & 4824 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

STATE OF GUJARAT - Petitioner(s)
Versus
AHER JAGA RAMSHI - Respondent(s)

==========

Appearance :
MS ARCHNA RAVAL Ld. AGP for Petitioner(s) : 1,
None for Respondent(s) : 1,
==========

CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 17/03/2006

ORAL JUDGMENT

1. Heard the learned AGP, Ms.Archna Raval, appearing on behalf of petitioners.

2. In both these petitions, the petitioner – Forest Department has challenged the common award passed by Labour Court, Jamnagar in respect to Aher Jaga Ramshi and Pratapsinh Ratansinh in Reference Nos.145 of 1994 and 147 of 1994 dated 19th May,2004. The Labour Court, Jamnagar has partly allowed the Reference in favour of Aher Jaga Ramshi and Pratapsinh Ratansinh and granted reinstatement with continuity of service without back wages of interim period. The Labour Court, Jamnagar has rejected the Reference No.146 of 1994 in respect to Bhikhubhai Khimaji. The Labour Court has directed to implement the said award within a period of 30 days from the date of its publication. The contention raised by learned AGP, Ms.Archna Raval, before the Labour Court that the petitioner is not an 'industry' within a meaning of Section 2(j) of the I.D.Act,1947. She submitted that according to budgetary provision, casual employees are employed by the Department and, therefore, workman is not entitled any relief under the provisions of the I.D.Act,1947. She also submitted that there is no termination by the

petitioner, but workmen have stopped coming to work and, therefore, it is not a case of retrenchment and for that, Section 25-F of the I.D.Act,1947 is not required to be complied with. She relied upon the decision of Full Bench of this Court in case of Gujarat Forest Producers, Gatherers and Forest Workers Union Vs. State of Gujarat, reported in 2004 (2) GLR 1488 and submitted that in view of this decision of the Full Bench of this Court, the petitioner is not an “industry” within a meaning of Section 2(j) of the I.D.Act,1947. She also submitted that the termination as alleged is of the year 1985 and the dispute has been raised by the workmen after a period of 9 years and, therefore also, the reference is bad. She also submitted that workmen had not completed 240 days' service as required under Section 25-B of the I.D.Act,1947 and the date of appointment is not mentioned by the workmen in the statement of claim. Except that, no other submission is made by learned AGP, Ms.Archna Raval and no decision is relied by her.

3. I have considered the submissions made by learned AGP, Ms.Archna Raval and have also perused the common award passed by Labour Court, Jamnagar. The facts of the case are that according to workmen, they were working for more than 7 to 8 years continuously and in each year, they completed 240 days' continuous service. They were working as Watchman and their services were terminated by petitioner on 1st July,1985. That after service of demand notice to the petitioner, the dispute has been referred for adjudication to the Labour Court on 26th April,1994. The contentions raised by petitioner before the Labour Court are same, which are raised before this Court. It is mainly contended that petitioner is not an “industry” and PWD Manual is applied and accordingly work has been taken from the workmen, and payment was made which depends upon the budgetary provision receiving grant from the Government and workmen have left the job at their own. So, there was no termination by the petitioner. Before the Labour Court, workmen have produced certain documents vide Exh.16 in which a certificate

has been issued by the Forest Officer on 20th February,1984 vide Exh.18 in respect to workman – Jaga Ramshi. That details of service prepared by workman – Jaga Ramshi from 1976 to 1985 are also produced. The certificate in respect to Pratapsinh Ratansinh about service rendered by him, given by Forest Officer dated 21st August,1984 was produced by him. Similarly his personal report is also produced on record by the workman. Workman Jaga Ramshi was examined vide Exh.17 and another workman was also examined vide Exh.26. Both the workmen supported their case as mentioned in statement of claim. Thereafter, on behalf of petitioner, vide Exh.29, one Vasudev Bhagwanji was examined, who supported the averments made in written statement. Said witness in cross-examination stated that 8 workmen made permanent, but from which date, he is not aware. That 5 daily rated employees were working, but from which date, he is not aware. But they were working in Nursery Department and on completion of one work site, the work at another site has to be entrusted to the workmen. The nature of work which were

performed by the workmen is still continued with the petitioner and the payment is made to the workmen by Department and for that, no prior permission is necessary from authority. Thus, according to evidence of said witness of petitioner, work which was being performed by respondents - workmen is still continue with petitioner and same is perennial in nature. According to requirement of work, Range Forest Officer, considering budgetary provision, employed such daily wager in absence of permanent employee. The work which was carried out by these workmen in Nursery Department, they are not performed by permanent employee. He also admitted in cross-examination that such daily wagers had completed 240 days' service within one year and in some cases, it is not completed. It is stated that workman has stopped coming to work, but for that there is no documentary evidence with him and no notice have been served to the workman by the petitioner. Then, vide Exh.32, 33 and 34, written arguments were produced by the workmen relying upon certain decisions of Apex Court and various High Courts. Similarly, petitioner

has also produced written arguments vide Exh.35, 36 and 37 raising the same contention in written submissions. Thereafter, Labour Court has examined the matter on merits. Ultimately, the Labour Court has come to the conclusion relying upon the certificate issued by the petitioner. The certificate in favour of Jaga Ramshi from Forest Department, Jamnagar Road Side, Range Lalpur, wherein, he was working for 7 to 8 years continuously as a watchman and his work was found satisfactory and regular and for that, a certificate was issued to Jaga Ramshi by the authority. According to certificate issued by the petitioner, from 1977 to 1984, in each year, workman had completed 240 days' continuous service and similarly in case of Pratapsinh Ratansinh, vide Exh.16/4, the certificate issued by the Officer, wherein, he was working for about 1 year and 6 months continuously in the post of watchman and completed continuous service of 240 days. Vide Exh.16/6 the details produced by the petitioner with the signature of Range Forest Officer. Even considering that details also, both the workmen have

completed continuous service of 240 days' within a period of one year and from the date of termination preceding 12 months. Therefore, Labour Court relying upon these documentary evidence produced by the workmen as well as by the petitioner, come to the conclusion that both the workmen had completed continuous service of 240 days. But in respect to Bhikhubhai, no such evidence was produced by the workman and, therefore, his case was rejected. There is no dispute by the petitioner that Section 25-F has been complied with. Therefore, ultimately, Labour Court has come to the conclusion that mandatory requirement of Section 25-F of the I.D.Act,1947 has been violated by petitioner. The contention raised by petitioner that workmen have left the job and not reported for work, the Labour Court has come to conclusion that if the workmen have left the job, there was no notice issued by the petitioner to the workmen calling the workman on job and no departmental inquiry was initiated and no effective steps to show or to prove the defence was taken by the petitioner. Therefore, ultimately, Labour Court

has come to conclusion that it is not a case of abandonment of service, but it is a case of termination by petitioner. Having completed 240 days' on the basis of certificate, non-compliance of Section 25-F rendered order of termination ab initio void. According to my opinion, this finding given by the Labour Court is perfectly legal and valid. For that, Labour Court has not committed any error. The Labour Court has not granted any amount of back wages in favour of both the workmen on the ground that delay in raising the dispute by the workmen and petitioner is a public department and, therefore, Labour Court has not granted any amount of back wages in favour of workmen.

4. The contention raised by learned AGP,Ms.Archna Raval, that petitioner is not an “industry” and has relied upon the decision of the Full Bench of this Court in the case of Gujarat Forest Producers, Gatherers & Forest Workers Union Vs. State of Gujarat, reported in 2004 (2) GLR 1488. Before the Labour Court, there was clear evidence that both the

workmen were working in Nursery Division at Jamnagar Road Side Range Lalpur. So, Nursery Division of Forest Department is not enjoying the status of sovereign function. There is no evidence led by petitioner before the Labour Court to prove the fact that Nursery Division is sovereign function of State. Even witness of petitioner has not said about sovereign function. Nursery Division is maintaining plantation and selling the same including wood received therefrom, in public on commercial basis. The Nursery Division prepared wooden furniture from said wood received from such trees. The said wooden furniture is selling in public in open market. Therefore, activities carried out by Nursery Division cannot be considered to be sovereign function of the State. The Full Bench of this Court has discussed this aspect in reply to Question No.1 and observed that particular establishment, unit or undertaking is an industry or not which depends upon the nature of work done by such entity and only when the activity undertaken amounts to an activity for production or distribution of goods and/or service for satisfying

want and desire of consumption in the sense in which concepts are understood in the field of industrial economy, satisfying the third ingredient of the triple ingredients test that such unit, establishment or undertaking of the department can be said to be “industry”. Looking to the evidence on record of workmen as well as petitioner that workmen those who were working in Nursery Division are not performing sovereign function of the State. It was an activity in which workmen were working relate to production or distribution of goods and service for satisfying human want and desires of consumptions. Therefore, according to my opinion, workmen those who were working in the Nursery Division, it is not a sovereign function of the State which can exclude this Nursery Division from the definition of “industry” under Section 2(j) of the I.D.Act,.1947. Relevant answer of question No.1 from the decision of Full Bench of this Court is quoted as under :

> Ans-(i) The Forest and Environment Department of the State Government is not an industry under Section 2(j) of the Industrial Disputes Act, 1947 and the question whether any of

its unit, establishment or undertaking is an industry or not will depend upon the nature of the work done by such entity and only when the activity undertaken amounts to an activity for production or distribution of goods and / or services for satisfying wants and desires of consumers, in the sense in which the concepts are understood in the field of industrial economy, satisfying the third ingredient of the triple ingredients test, that such unit, establishment or undertaking of the Department can be said to be industry, unless falling in the categories removed by constitutional and competently enacted legislative provisions from the scope of the Industrial Disputes Act as indicated in clause(c) of Item IV of the guidelines laid down by the Supreme court in paragraph 161 of Bangalore Water Supply case (supra), including the law falling under Articles 309 to 311 of the Constitution."

5. It is contended by learned AGP, Ms.Archna Raval, that there is a delay in raising the dispute by the workmen and, therefore, the reference is bad. There is no limitation prescribed under Section 10, which require to raise dispute within some period or within

some time limit.

6. Recently, the Apex Court has considered the decision of Ajayab Singh Vs. Sirhind Co.op, reported in 1999 (2) Scale 508, Sapan Kumar Pandit Vs. UP Electricity Board reported in (2001) 6 SCC 222 and in case of Nedungadi Bank Ltd. Vs. KP Madhavankutti reported in (2000) (2) SCC 455 in case of Sahaji Vs. Executive Engineer, PWD reported in 2005 (5) Scale 261, wherein, delay of 16 years for raising the dispute has been condoned by the Apex Court. The relevant observations in Para.3 to 6 are quoted as under :

> “3. In this Appeal the question which arises for our consideration is whether the Labour Court, Ahmedabad could have answered the reference in the negative merely on the ground that the reference made to it by the appropriate Government was delayed by several years. The Reference made to the Labour court was in the following terms :
>
> > “Shri Shahaji Narayan Shewale (Labour) should be reinstated with full back wages

and continuity of service with effect from 1.6.1980.”

4. The case of the appellant was that his services were terminated with effect from June 1, 1980. the conciliation proceedings took place much later in the year 1996 where after a reference was made to the Labour Court Aurangabad under Clause c of Subsection (1) of Section 10 read with Section 12 of the Industrial Disputes Act,1947. The Labour Court did not entertain the dispute on the ground that there was delay in making the reference, therefore, the reference was stale and not tenable under law.

5. The appellant herein assailed the order of the Labour Court before the High court of Judicature at Bombay, bench at Aurangabad, before a Single Judge, who dismissed the Writ Petition. The Letters Patent Appeal filed by the appellant was rejected by the Division Bench by its judgment and order dated 25th August,2003.

6. We have heard counsel for the parties and we have also been taken through the judgments of this Court reported in (1999) 6 SCC 82 Ajaiab Singh Vs. Sirhind Co-op., (2002) 2 SCC 455 Nedungadi Bank Ltd. Vs. K.P.Madhavankutty and [(2001) 6 SCC 222 Sapan Kumar Pandit Vs. UP Electricity Board. Having gone through the judgments we have no doubt that the judgment of this Court in Ajaiab Singh's case lays down the law correctly. In the instant case, there was no ground of delay urged by the management. Moreover, if even there was delay in making reference to the Labour court, if it come to the conclusion that the termination was illegal, it could have suitably moulded the relief to be granted to the workman in view of the delay. In such cases the award of back wages may either be not permitted, or curtailed. In Nedungadi Bank's case what was challenged before the High court was the order making the reference. That was not a case where the Labour court refused to entertain the dispute on the ground of delay. Having

regard to the clear position in law, we are left with no option but to allow this appeal and set aside the judgment and order of the High Court."

6.1 Therefore, according to my opinion, the dispute which has been raised by the workmen after a period of 9 years that cannot fatal the proceedings before the Labour Court. The main question which requires to be examined by the authority, whether at the time of raising the dispute, whether it was existed or not. If the dispute is exist, only delay is immaterial and authority is entitled to refer such dispute even after a period of 9 years or even more period. The order of reference is also not challenged by petitioner in higher forum.

7. Therefore, considering the aforesaid decision of the Apex Court, according to my opinion, contention raised by learned AGP, Ms.Archna Raval, is rejected. However, it is to be noted that delay period is not adversely affect to the petitioner because Labour Court has not granted any amount of back wages

against the petitioner. So delay is not causing any prejudice to the petitioner. Therefore, according to my opinion, Labour Court has not committed any error while passing the award. There is no infirmity in the award and Labour Court has given cogent reason in support of its conclusion. The finding given by Labour court is relating to factual aspect which is not baseless and perverse. Over and above that, this Court having very limited jurisdiction to interfere with such award and this Court cannot act as an appellate authority and this Court cannot re-appreciate the evidence which was appreciated by the Labour Court. Even in case of two views are possible, even though this court cannot have jurisdiction to interfere with the award passed by Labour Court. Therefore, considering the entire facts which are on record, according to my opinion, the Labour Court has not committed any error which require any interference by this Court while exercising powers under Article 227 of the Constitution of India. Hence, there is no substance in the present petitions. Present petitions stand dismissed with no order as to costs.

(H.K.RATHOD,J.)

(vipul)